

shall order defendant to pay restitution to The Centers for Medicare and Medicaid Services ("CMS") in the amount of \$13,644,598, and that such restitution shall be due immediately. This restitution obligation shall be joint and several with Braddock Management L.P.

17. Regarding a fine, the parties agree that no fine is appropriate. Nonetheless, defendant understands that Section 8C of the Sentencing Guidelines sets forth the factors to be weighed in setting a fine, if any, and in determining the schedule, if any, according to which a fine is to be paid in this case. The defendant agrees to provide full and truthful information to the Court, the United States Probation Office, and the United States Attorney's Office regarding all details of its economic circumstances in order to determine the proper fine and fine schedule, if any. Defendant understands that providing false or incomplete information may be prosecuted as a violation of Title 18, United States Code, Section 1001, or as a contempt of the court, and would constitute a breach of this Plea Agreement.

18. The parties agree that the economic circumstances of Braddock and Bainbridge are such that is extremely unlikely that the restitution ordered in this case will ever be paid by either defendant. Braddock and Bainbridge have negotiated a compromise

regarding restitution with the victim, CMS, and the United States Attorney's Office. Braddock and Bainbridge have agreed with the United States Attorney's Office and CMS that any and all restitution judgments entered by the Court will be fully satisfied and compromised to \$2.9 million. The parties agree that, prior to the entry of a guilty plea by Braddock or Bainbridge, funds in the amount of \$2,900,000 will be deposited into an attorney trust account with instructions that, upon the District Court's entry of an order implementing the restitution compromise as described herein, the custodian of the attorney trust account shall immediately deliver to the Clerk of the United States District Court a certified check in the amount of \$2.9 million, which funds shall be applied toward the satisfaction of any judgments entered in this case. Proof that funds in the amount of \$2,900,000 have been deposited into an attorney trust account will be provided to the United States Attorney's Office prior to the entry of a guilty plea by the defendants.

19. At the time of sentencing, the parties agree to jointly recommend: (a) that the Court impose a sentence of probation; (b) that the Court impose no fine or penalty; (c) that the Court order defendant to pay restitution to CMS, due immediately, in

the amount of \$13,644,598, which obligation shall be joint and several with Braddock Management L.P.; (d) that the Court enter an order approving the negotiated restitution compromise and full satisfaction between Braddock, Bainbridge, CMS and the United States Attorney's Office; and (e) that the Court enter an order directing the custodian of the aforementioned attorney trust account to deliver immediately to the Clerk of the Court a certified check in the amount of \$2.9 million which is to be applied to the negotiated restitution compromise. On other aspects of the sentence, the parties shall be free to recommend whatever each deems appropriate.

20. It is agreed by the parties that if the sentencing judge does not accept the recommendations of the parties set forth in Paragraph 19(b), 19(d) and 19(e), then (a) this Agreement shall become null and void and neither party will be bound thereto, (b) defendants will be entitled to withdraw their guilty pleas, and (c) the custodian of the attorney trust account for the \$2.9 million escrowed pursuant to paragraph 18 of the Agreement will immediately return this \$2.9 million to the depositor. It is further agreed by the parties that, if the sentencing judge accepts the recommendations of the parties set forth in Paragraph 19(b), 19(d) and 19(e) and the custodian of

the aforementioned attorney trust account fails to deliver \$2.9 million to the Clerk of the Court as described above, then this Agreement shall become null and void and neither party will be bound thereto.

21. The United States agrees not to seek additional criminal charges in the Northern District of Illinois against the defendants or Bainbridge Management Inc. based on conduct now known by the United States for the period from 1995 through 2001 that occurred in the Northern District of Illinois. However, nothing in this Agreement limits the United States in prosecution of the defendants in other districts or for crimes not known to the government at the time of this plea, except as expressly set forth in this Agreement.

22. After sentence has been imposed on the count to which defendant pleads guilty as agreed herein, the government will move to dismiss with prejudice the remaining counts as to this defendant, as well as Bainbridge Management, Inc., in all charging documents then on file with the Clerk in this criminal case. In addition, the government will move to dismiss defendant and Bainbridge Management, Inc. from the civil case in this court captioned United States of America v. Peter Rogan, Braddock

Management L.P., Bainbridge Management L.P. and Bainbridge Management, Inc., Case No. 02 C 3310.

23. Defendant understands that its compliance with each part of this Plea Agreement extends throughout and beyond the period of its sentence, and failure to abide by any term of the Plea Agreement is a violation of the Agreement. It further understands that in the event it violates this Agreement, or if the United States is unable to retain or obtain the financial benefits of this Plea Agreement, the government, at its option, may move to vacate the Plea Agreement, rendering it null and void, and thereafter prosecute the defendant not subject to any of the limits set forth in this Agreement, or to resentence the defendant. The defendant understands and agrees that in the event that the defendant's Plea is subsequently withdrawn, vacated or breached by the defendant, and the Government elects to void the Plea Agreement and prosecute the defendant, any prosecutions that are not time-barred by the applicable statute of limitations on the date of the signing of this Agreement may be commenced against the defendant in accordance with this paragraph, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement of such prosecutions.

24. If the United States or its agencies are forced to give up any of the financial benefits of this Plea Agreement, whether as a result of a bankruptcy or otherwise, the parties agree: (a) that the \$2.9 million compromised restitution judgment shall be reinstated and that the United States and its agencies shall be free to pursue any and all remedies to collect on that judgment from any party; and (b) that, in civil case 02 C 3310, the civil settlement agreement shall govern, pursuant to which, among other things, the government's civil claims in that case shall be reinstated.

25. Defendant and its attorney acknowledge that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in this Agreement, to cause defendant to plead guilty.

26. Defendant acknowledges that it has read this Agreement and carefully reviewed each provision with its attorney. Defendant further acknowledges that it understands and voluntarily accepts each and every term and condition of this Agreement.

AGREED THIS DATE:

Jan. 15, 2003

Patrick J. Fitzgerald
PATRICK J. FITZGERALD
UNITED STATES ATTORNEY

Bainbridge Management LP
BAINBRIDGE MANAGEMENT L.P.
Defendant

By Vincent J. Connelly
For its general partner
Bainbridge Management, Inc.

Jacqueline Stern
JACQUELINE STERN
Assistant United States Attorney

Vincent J. Connelly
VINCENT J. CONNELLY
Attorney for Defendant

Kaarina Salovaara
KAARINA SALOVAARA
Assistant United States Attorney

Bainbridge Management, Inc.
BAINBRIDGE MANAGEMENT INC.

By James R. Streish
Its Attorney

EXHIBIT C

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,)
)
 GOVERNMENT,)
)
vs.) No. 01 CR 469
)
ROGER EHMAN, et al.) Chicago, Illinois
) November 28, 2001
 Defendants.) 9:00 o'clock a.m.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE SUZANNE B. CONLON
SENTENCING

APPEARANCES:

For the Government THE HONORABLE SCOTT LASSAR
UNITED STATES ATTORNEY, by
Ms. Jacqueline O. Stern
Ms. Kaarina Salovaara
Mr. Daniel E. May
Assistant United States Attorneys
219 South Dearborn Street,
Suite 500
Chicago, Illinois 60604

For Defendant JONES, DAY, REAVIS & POGUE, by
Ehmen Mr. Daniel E. Reidy
Mr. Christopher Cook
77 West Wacker Drive
Chicago, Illinois 60601-1692

Court Reporter:

BLANCA I. LARA
Official Court Reporter
United States District Court
219 South Dearborn Street, Suite 2328A
Chicago, Illinois 60604
Telephone (312) 435-5895

1 second point at which the government's recommendation on
2 October 15th takes a definite position, comes to a
3 total, and then has hedge language in other places of
4 the agreement. I am referring to what position the
5 government took with respect to the Probation Office in
6 its calculations on page seventeen.

7 MS. STERN: Judge, I was -- I was honestly
8 trying to do as thorough a job in a very complicated
9 case, where there are many witnesses, as I possibly
10 could. And I've tried to give the Court as much
11 information as I possibly could. And, obviously, I did
12 not intend to create confusion, but I have tried to
13 clarify.

14 THE COURT: Minimally, did you do that.
15 Minimally, you have done that.

16 MS. STERN: Judge, do you want me to address
17 the factual issue?

18 THE COURT: Well, yes, if you would like to
19 expand your reasoning as to how Mr. Ehmen was in control
20 of the doctors who actually perpetrated the fraud.

21 MS. STERN: Judge, I think that his role was
22 two-fold. One is, he recruited people to participate in
23 the scheme. And I think that there's abundant evidence
24 of that.

25 There was a doctor in early 1991. And he

1 recruited that doctor and ended up paying a substantial
2 amount of money. The hospital paid for patients from
3 that doctor, according to Dr. Barnabas who was present
4 during the conversations when Mr. Ehmen recruited that
5 doctor.

6 He recruited Barnabas to bring his patients
7 from Methodist saying, "What can we do to get you to
8 bring your patients?"

9 He recruited other individuals in order to get
10 them to bring patients.

11 On tape, when Rao and Barnabas came in with
12 the name of another doctor, it was Ehmen who planned to
13 go out and meet the doctor in order to recruit that
14 particular doctor.

15 In addition to that, he directed people in the
16 scheme. For example, he told Dr. Rao and Barnabas that
17 Kumar had to educate the patients on what to say. He
18 directed Rao and Barnabas to have Kumar coach the
19 patients. On 4-10-98, which is identified in the
20 Santiago proffer on page twenty-nine, that is what Ehmen
21 told Rao and Barnabas, that Kumar had to educate the
22 patients on what to say. And there are other tapes,
23 which are also summarized, in which he is telling -- he
24 is directing that Kumar must coach the patients.

25 In addition, he directed Barnabas to use

1 Cubria on all cardiac consults. So Barnabas could have
2 used anybody who was at the hospital or used nobody, but
3 Ehmen directed Barnabas to take a certain action in
4 order to further the scheme, and that action was to use
5 Cubria on all cardiac consults. And that's in
6 Dr. Barnabas' statements on page eight.

7 And when he was recruiting Monty McClellan to
8 work at the hospital, he told McClellan that Cubria
9 would be the cardiologist that McClellan would work
10 with. And that's in transcript 169, May 2, 1997.

11 In addition, Judge, he was responsible for
12 hiring and firing. And he directed patients -- I'm
13 sorry, he directed doctors to increase their admissions,
14 which was the point of the scheme. Dr. Gee stated that
15 in November of '95 his Edgewater admissions dropped to
16 six or eight patients and Ehmen told him he needed to
17 admit more patients. In October or November of '95 --
18 sorry, in December of '95, Dr. Gee only admitted two
19 patients to Edgewater and Ehmen told him that his
20 admissions were low and that he needed to pick them up.
21 in January of '96 Ehmen met with him and fired him.

22 There was a woman named Marilyn Tolliver, and
23 she was hired by Ehmen in order to obtain patients as
24 part of a home visit process. And she submitted a
25 resignation letter stating she was resigning because the

1 program was admitting patients who didn't need
2 hospitalization. And when Ehmen got the letter, he told
3 her to change it because he didn't like what was in it.
4 Ehmen told her that he expected her to admit twenty
5 patients to the hospital each month, and he told her to
6 see more patients in order to get more admissions.

7 There was a woman named Sherry Bottbaum who
8 worked at the hospital as an administrative assistant to
9 Roger Ehmen. And he directed her to falsify time sheets
10 and back-date them, and that was because, again, these
11 are patients specifically for Barnabas, Cubria and
12 another doctor and Sriram who were not providing the
13 services that the contract was paying for.

14 And other people have provided information
15 saying that Ehmen called and directed them to admit
16 additional patients.

17 So, Judge, he was recruiting doctors and he
18 was directing doctors, which, I believe, makes him a
19 leader or organizer.

20 THE COURT: Mr. Cook?

21 MR. COOK: Your Honor, everything that
22 Ms. Stern has alleged is consistent with Mr. Ehmen being
23 a manager or supervisor. And, in fact, everything that
24 she has alleged was known to the government on October
25 15th when they came to the conclusion that Roger Ehmen

1 was a manager or a supervisor.

2 But more importantly, your Honor, Roger Ehmen
3 was not at the top of the pyramid. The purpose of this
4 enhancement is to have variable culpability for people
5 at varying levels of responsibility. The submission
6 made by the government this morning to your Honor and
7 yesterday to the defense through Dr. Garofsky, I think,
8 is particularly telling in that respect. On that
9 interview on November 7th, Dr. Garofsky says, on page
10 three:

11 "...Ehmen always answered to Rogan. He
12 could never do anything on his own...,"

13 According to the Government's evidence --

14 THE COURT: Mr. Rogan was the owner?

15 MR. COOK: Rogan was the owner and the CEO,
16 your Honor.

17 According to the government's contentions and
18 the Government's evidence, everything that the
19 Government just described that Roger Ehmen did is, under
20 the government's view of the evidence, something that
21 Peter Rogan told him to do.

22 The way the government has set up this scheme,
23 your Honor, and the way it operated, was the doctors
24 operated it, with Dr. Rao running the show. I believe
25 the tapes amply support the fact that Dr. Rao, on that

1 side of the scheme, was running the show.

2 On the hospital side, similarly, Roger Ehmen
3 worked for Peter Rogan. The contract negotiations, when
4 Barnabas and Rao approached Mr. Ehmen -- not the other
5 way around, at least according to Dr. Barnabas'
6 statement on page five attached to their November 7th
7 version of the offense -- when Barnabas and Rao
8 approached Roger Ehmen, it was Peter Rogan that closed
9 the deal.

10 Your Honor, moreover, it's important to note
11 that Roger Ehmen did not have a claimed right to a
12 larger share of the fruits of the crime as an organizer
13 or leader. Of all of the people in this case, your
14 Honor, Roger Ehmen is the only one who took home only
15 his salaries. The doctors received billings directly as
16 a result of the improper conduct. They received bribes,
17 the hospital made profits. Roger Ehmen earned a salary.
18 Earning a salary is not consistent with being the
19 organizer or the leader of the scheme. It is absolutely
20 consistent with being a manager or a supervisor.

21 So, your Honor, a manager or a supervisor, by
22 definition, is going to have some degree of control over
23 others in the scheme. He is going to manage them, to
24 direct what they do, but simply not be the moving force
25 in organizing the scheme. And I think the government's

1 evidence, as they concluded originally on October 15th,
2 overwhelmingly shows that Dr. Rao, and as they allege,
3 Peter Rogan, organized the scheme, but that Dr. Barnabas
4 and Roger Ehmen held similar positions as managers and
5 supervisors in the scheme. And we would ask that
6 Mr. Ehmen be sentenced with an enhancement similar to
7 Dr. Barnabas' as a manager or supervisor.

8 THE COURT: Was Mr. Rogan indicted
9 separately?

10 MS. STERN: Judge, he has not been charged.
11 And may I address some of the points?

12 THE COURT: I'm curious as to why. He was the
13 owner of the operation and he had the power to hire or
14 fire Mr. Ehmen. Is the government's view that he wasn't
15 a part of this? I thought he was named as a
16 coconspirator.

17 MS. STERN: Judge, people have told us -- for
18 example, Cubria said that when the investigation came
19 up, he came to Cubria and said destroy your notes,
20 destroy your computer. We have had testimony or
21 information from various people, but the fact of the
22 matter is, the person that everyone dealt with was Roger
23 Ehmen. He was the front man. He made the statements,
24 he dealt with the doctors, he signed the contracts, he
25 negotiated the contracts. Now, he often said, and he

1 says on tape, "I have to check with Rogan. I'll get
2 back to you," but the fact of the matter is, the direct
3 contact was Rogan.

4 Now, he told Garofsky -- Garofsky said he
5 talked with him, for example, about Cubria many times.
6 And Ehmen said, "I talked to Rogan and he's not going to
7 do anything about it." And Garofsky says, basically,
8 that the doctors in the hospital who run quality
9 assurance had no power, they couldn't enforce the
10 quality assurance in any way. And that is what
11 Dr. Zanetti says as well.

12 The hospital, Judge, was set up in a way that
13 allowed this fraud to proceed. They had one woman who
14 was the quality assurance person for the entire
15 hospital. And she was the one who gave the files to the
16 doctors for the doctors to review. So there really was
17 no quality assurance. And it was Ehmen and Rogan who
18 set the hospital up in that way.

19 Rogan and Ehmen, it appears from the evidence,
20 worked hand in hand. And I think that it is fair to say
21 that more than one person would deserve a leader or
22 organizer enhancement, but the fact that Rogan is
23 working closely with Ehmen and that they conspired
24 together and made decisions together and that Ehmen is
25 the one who is doing the recruiting and is out talking

1 to the doctors and telling the doctors there is no hope
2 to getting any change in this hospital, still leaves him
3 at the top of the pyramid, side by side with the owner
4 of the hospital.

5 And in terms of the amount of money that he
6 makes, Judge. He made 1 million dollars over the period
7 half of the 1990's, and he got bonuses as part of that
8 1 million dollars. The fact is, he was very well
9 rewarded in his position. He made more than \$100,000 a
10 year, more than \$150,000 a year.

11 THE COURT: All right. Well, again, the role
12 in the offense, there is no dispute. The defendant
13 doesn't dispute that he was a manager or supervisor.
14 And, indeed, that was the position the government took
15 in its proposed guideline calculations in its October
16 15th submission.

17 There are a number of factors one needs to
18 consider in determining role. The supreme or top
19 penalty, of course, goes to the person who is clearly
20 the organizer or leader, and that must be established by
21 a preponderance of the evidence. It must be shown that
22 that person was the ultimate decisionmaker, that he had
23 the control. And another indicator is whether or not
24 the leader or organizer has a larger share of the fruits
25 of the crime. Here we have a salaried employee.

EXHIBIT D

1

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

1 UNITED STATES OF AMERICA,)
2)
3 GOVERNMENT,)
4)
5 vs.) No. 01 CR 469 - 2 & 3
6)
7 RAVI T. BARNABAS & ROGER EHMEN,) Chicago, Illinois
8) October 1, 2001
9 Defendants.) 4:00 o'clock p.m.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE SUZANNE B. CONLON
GUILTY PLEAS

APPEARANCES:

12 For the Government THE HONORABLE SCOTT LASSAR
13 UNITED STATES ATTORNEY, by
14 Ms. Jacqueline O. Stern
15 Ms. Kaarina Salovaara
16 Assistant United States Attorneys
219 South Dearborn Street
Suite 500
Chicago, Illinois 60604

Court Reporter:

18 BLANCA I. LARA
19 Official Court Reporter
20 United States District Court
219 South Dearborn Street, Suite 2328A
Chicago, Illinois 60604
Telephone (312) 435-5895

Appearances (Continued)

For Defendant JONES, DAY, REAVIS & POGUE, by
Ehmen Mr. Christopher Cook
Mr. Joseph Shereda
77 West Wacker Drive
Chicago, Illinois 60601-1692

For Defendant MONICO, PAVICH & SPEVACK, by
Barnabas Mr. Michael D. Monico
Mr. Barry A. Spevack
29 South LaSalle Street
Suite 720
Chicago, Illinois 60603

1 DEFENDANT EHMEN: It's Ehmen.

2 THE COURT: Ehmen. Yes.

3 Would you state your full name and spell your
4 last name.

5 DEFENDANT EHMEN: First name is Roger,
6 R-o-g-e-r, middle name is Henry, last name is Ehmen,
7 E-h-m-e-n.

8 THE COURT: How old are you, Mr. Ehmen?

9 DEFENDANT EHMEN: 55 years old.

10 THE COURT: And where do you live?

11 DEFENDANT EHMEN: Arlington Heights,
12 Illinois.

13 THE COURT: And, Dr. Barnabas, did I ask you
14 where you lived? I don't know if I did.

15 DEFENDANT BARNABAS: No, you didn't, but I
16 live in Lincolnwood, Illinois.

17 THE COURT: I see.

18 And how far did you go in school, Mr. Ehmen?

19 DEFENDANT EHMEN: I have a masters in business
20 administration.

21 THE COURT: From where?

22 DEFENDANT EHMEN: From Northern Illinois
23 University.

24 THE COURT: And what kind of work have you
25 done in the last 3 years?

1 DEFENDANT EHMEN: I have worked in
2 administrative capacity at Edgewater Medical Center.

3 THE COURT: And when did that terminate?

4 DEFENDANT EHMEN: That terminated in February
5 of 2001, your Honor.

6 THE COURT: Are you in good physical health?

7 DEFENDANT EHMEN: Yes, I am, your Honor.

8 THE COURT: Have you taken any drugs,
9 medication or alcohol in the last 24 hours?

10 DEFENDANT EHMEN: No, your Honor.

11 THE COURT: Not of any kind?

12 DEFENDANT EHMEN: No.

13 THE COURT: Have you ever been under the care
14 of a doctor or in a hospital for any kind of a mental
15 problem?

16 DEFENDANT EHMEN: No, your Honor.

17 THE COURT: And, counsel, do you have any
18 information that might suggest to you that Mr. Ehmen has
19 ever had any kind of mental problem or disturbance?

20 MR. COOK: No, your Honor.

21 MS. STERN: No, your Honor. Again, with
22 Mr. Ehmen, I have spent a number of hours talking with
23 him and with federal agents, and, again, he was very
24 clear in his answers and understood the questions and
25 acted appropriately.

1 THE COURT: And, Mr. Cook, let me ask you,
2 without disclosing the contents or substance of your
3 conversations with your client, in your professional
4 judgment does Mr. Ehmen understand the nature of these
5 proceedings?

6 MR. COOK: Yes, your Honor, he does.

7 THE COURT: In a rather complex charge made
8 against him in Count 57 of the indictment?

9 MR. COOK: Yes, your Honor, he does.

10 THE COURT: In your professional judgment, is
11 Mr. Ehmen capable of cooperating with you in the defense
12 of this case?

13 MR. COOK: Yes, your Honor, he is.

14 THE COURT: And does he appear lucid and
15 rational in your dealings with him?

16 MR. COOK: Yes, he does, your Honor.

17 THE COURT: All right, Mr. Ehmen, I do find
18 that you are mentally competent today to offer a plea of
19 guilty.

20 Have you had enough time to discuss this
21 matter with your attorneys?

22 DEFENDANT EHMEN: Yes, your Honor.

23 THE COURT: And have you told them basically
24 everything you are aware of in connection with this
25 case?

1 DEFENDANT EHMEN: Yes, your Honor.

2 THE COURT: Are you satisfied with the advice
3 they've given you and the efforts your attorneys have
4 made on your behalf?

5 DEFENDANT EHMEN: Yes, your Honor.

6 THE COURT: All right. Now, Count 57 of the
7 indictment charges racketeering. And I am going to,
8 again, ask each of you whether you have personally read
9 the allegations about you and others concerning Count
10 57.

11 Dr. Barnabas, have you read this charge?

12 DEFENDANT BARNABAS: Yes, your Honor.

13 THE COURT: And, Mr. Monico, without
14 disclosing the substance of your conversations, have you
15 gone through all the allegations the government has made
16 against your client in Count 57?

17 MR. MONICO: Yes, your Honor.

18 THE COURT: And, in a general sense, again
19 without disclosing the content of your conversations,
20 have you explained to your client the legal implications
21 of a complex racketeering charge such as this?

22 MR. MONICO: I have, your Honor, yes.

23 THE COURT: And, in your professional
24 judgment, does Dr. Barnabas understand the nature of the
25 charge, the complex charge made in Count 57?

1 MR. MONICO: Yes, your Honor.

2 THE COURT: And the consequences to himself?

3 MR. MONICO: Yes, your Honor.

4 THE COURT: Mr. Ehmen, have you personally
5 read Count 57 of the indictment?

6 DEFENDANT EHMEN: Yes, your Honor.

7 THE COURT: And, Mr. Cook, have you and your
8 co-counsel, again without disclosing the substance of
9 your conversations, have you explained to Mr. Ehmen the
10 complex nature of the racketeering charge made in Count
11 57 --

12 MR. COOK: Yes, I have, your Honor.

13 THE COURT: -- and the implications to your
14 client?

15 MR. COOK: Yes, your Honor, counsel and I
16 have.

17 THE COURT: Now, I have several questions that
18 I am going to direct to both you, Dr. Barnabas, and
19 Mr. Ehmen, but I need to hear from you individually.

20 Do you each understand that under the
21 constitution and laws of the United States you are
22 entitled to a jury trial on all the charges against you?

23 DEFENDANT BARNABAS: Yes your Honor.

24 DEFENDANT EHMEN: Yes, your Honor.

25 THE COURT: And at the jury trial, you would

1 have the right to see and hear the testimony of the
2 prosecution witnesses, your attorneys would have the
3 right to cross-examine the prosecution witnesses, and
4 you would have the benefit of the Court's subpoena power
5 to bring your own witnesses to testify on your behalf.
6 Do you understand?

7 DEFENDANT BARNABAS: Yes, your Honor.

8 DEFENDANT EHMEN: Yes, your Honor.

9 THE COURT: Do you understand that you each
10 have the right to continue in your plea of not guilty?

11 DEFENDANT BARNABAS: Yes, your Honor.

12 DEFENDANT EHMEN: Yes, your Honor.

13 THE COURT: And if you continue in your plea
14 of not guilty, you would have the right to a speedy
15 trial, which I think has been set in early November.

16 MR. SPEVACK: November 2nd, your Honor.

17 THE COURT: And do you understand that you
18 would have that right?

19 DEFENDANT BARNABAS: Yes, your Honor.

20 DEFENDANT EHMEN: Yes, your Honor.

21 THE COURT: Do you understand at the trial you
22 would each be presumed to be innocent, and the
23 government would be obligated to prove your guilt,
24 individually, beyond a reasonable doubt?

25 DEFENDANT BARNABAS: Yes, your Honor.

1 DEFENDANT EHMEN: Yes, your Honor.

2 THE COURT: Do you understand that at trial
3 you would each have the right to testify on your own
4 behalf, if you wanted to?

5 DEFENDANT BARNABAS: Yes, your Honor.

6 DEFENDANT EHMEN: Yes, your Honor.

7 THE COURT: And as I explained earlier, you
8 also have the right not to testify. So if you wanted to
9 go to trial but you did not want to testify, you would
10 have that right, and the jury could not consider your
11 silence in any way as evidence against you. Do you
12 understand, Dr. Barnabas?

13 DEFENDANT BARNABAS: Yes, your Honor.

14 THE COURT: Mr. Ehmen?

15 DEFENDANT EHMEN: Yes, your Honor.

16 THE COURT: Do you understand that you could
17 either have a trial by jury or a trial by me without a
18 jury if you wanted to go to trial but you didn't
19 particularly want a jury trial, do you understand you
20 have that option, a bench trial?

21 DEFENDANT BARNABAS: Yes, your Honor.

22 DEFENDANT EHMEN: Yes, your Honor.

23 THE COURT: If we had a jury trial in the
24 case, we would select twelve persons at random from the
25 voter rolls for the Northern District of Illinois. You

1 and your attorneys would have the right to challenge any
2 prospective juror for possible bias or prejudice, and,
3 collectively, you could excuse ten additional
4 prospective jurors without giving me any reason at all.
5 Do you understand?

6 DEFENDANT BARNABAS: Yes, your Honor.

7 DEFENDANT EHMEN: Yes, your Honor.

8 THE COURT: This means that you and your
9 attorneys would play a significant role in deciding who
10 sat in judgment on you. Do you understand?

11 DEFENDANT BARNABAS: Yes, your Honor.

12 DEFENDANT EHMEN: Yes, your Honor.

13 THE COURT: Do you understand that the jury
14 would have to agree unanimously, and individually, on
15 each of your guilt? In other words, the jury would have
16 to consider the evidence against you individually and
17 determine whether there was sufficient evidence to
18 prove your guilt as to each charge beyond a reasonable
19 doubt.

20 DEFENDANT BARNABAS: Yes, your Honor.

21 DEFENDANT EHMEN: Yes, your Honor.

22 THE COURT: And they would have to consider
23 the evidence as to each count and each individual
24 defendant and co-defendant separately in terms of the
25 sufficiency of the evidence.

1 DEFENDANT BARNABAS: Yes, your Honor.

2 DEFENDANT EHMEN: Yes, your Honor.

3 THE COURT: Do you understand that if at trial
4 you were found guilty, you would have the right to an
5 appeal of all issues you raised before trial, during
6 trial and after trial?

7 DEFENDANT BARNABAS: Yes, your Honor.

8 DEFENDANT EHMEN: Yes, your Honor.

9 THE COURT: One of the important rights you
10 give up by pleading guilty is the right to an appeal of
11 most of the issues, legal and evidentiary issues that
12 you're entitled to raise if you go to trial. Do you
13 understand you are giving up that right?

14 DEFENDANT BARNABAS: Yes, your Honor.

15 DEFENDANT EHMEN: Yes, your Honor.

16 THE COURT: And in your case, Dr. Barnabas, I
17 understand from the plea agreement that you wish to give
18 up your right to an appeal also of sentencing issues
19 that you might raise, is that correct?

20 MR. MONICO: Judge, I think that according to
21 the paragraph it says as long as the sentence is within
22 the guideline range or below we would waive that. If
23 it's above the guideline range, we have not waived
24 that.

25 THE COURT: He is waiving his right to an

1 appeal of any sentencing issues he raise as to
2 application of the guidelines?

3 MR. MONICO: Yes, your Honor.

4 MS. STERN: Yes.

5 THE COURT: So you understand, ordinarily,
6 Dr. Barnabas, even pleading guilty, you would still have
7 the right to an appeal of any issues regarding
8 sentencing guidelines that would apply to your case?

9 DEFENDANT BARNABAS: Yes, your Honor.

10 THE COURT: And do you concur in your client
11 waiving any issues related to the application of the
12 sentencing?

13 MR. MONICO: Under the circumstances here,
14 your Honor, this is the position we're in, is that we've
15 made this decision.

16 THE COURT: All right. And is it your
17 decision to waive your right to an appeal of any
18 sentencing guideline issues that you raise?

19 DEFENDANT BARNABAS: Yes, your Honor.

20 THE COURT: And, Mr. Ehmen, as I understand
21 it, you do not have a written plea agreement with the
22 United States, is that correct?

23 DEFENDANT EHMEN: That's correct, your Honor.

24 THE COURT: So even if you decide to enter a
25 plea of guilty, you understand you still have the right

1 to an appeal of any sentencing issues you raise?

2 DEFENDANT EHMEN: Yes, your Honor.

3 THE COURT: Now, Dr. Barnabas, Mr. Ehmen, do
4 you each understand that if you enter a plea of guilty
5 and if I accept your plea of guilty, we will not have a
6 trial as to you, and I would enter a judgment of guilt
7 based on your guilty plea, and sentence you after I have
8 had the benefit of an independent investigation that
9 would be conducted by the Probation Office, and after I
10 have heard from each of you, your attorneys and counsel
11 for the United States as to what the appropriate
12 sentencing is in the case?

13 DEFENDANT BARNABAS: Yes, your Honor.

14 DEFENDANT EHMEN: Yes, your Honor.

15 THE COURT: Now, I cannot tell you today which
16 sentencing guidelines apply to your case because I,
17 frankly, do not know the details about the case or your
18 individual involvement, nor do I know anything about
19 each of your criminal histories. What I can tell you
20 today is the maximum punishment provided by law for the
21 offense charged in Count 57, which is a very serious
22 offense.

23 Count 57 carries a maximum penalty of 20 years
24 imprisonment, a maximum fine of \$250,000, or not more
25 than twice the gross gain to each of you or twice the

1 gross loss to the victims, which, from my reading at
2 least of the plea agreement, seems to be far in excess
3 of \$250,000.

4 MS. SALOVAARA: That will be the government's
5 understanding, your Honor.

6 THE COURT: So it is very likely the fine
7 would be in excess of \$250,000, do you understand?

8 DEFENDANT BARNABAS: Yes.

9 DEFENDANT EHMEN: Yes.

10 THE COURT: I couldn't tell you today what it
11 would be, because, again, that information is not
12 available to me.

13 The charge in Count 57 also carries a term of
14 supervised release of at least two years and not more
15 than 3 years, plus any restitution that is ordered by
16 the Court. In addition, by law, I would be required to
17 impose a special assessment of \$100 that would be due at
18 the time of sentencing.

19 And the racketeering charge also carries the
20 possibility, in fact, in Dr. Barnabas' case, the
21 certainty of a forfeiture order. Is there an agreement
22 for 1 million-dollar forfeiture order as to
23 Dr. Barnabas?

24 MS. STERN: Yes, Judge.

25 DEFENDANT BARNABAS: Yes.

1 THE COURT: Do you understand that, by
2 agreement, there is going to be an agreed judgment of
3 1 million dollars forfeiture with respect to you?

4 DEFENDANT BARNABAS: Yes, your Honor.

5 THE COURT: And, Mr. Ehmen, do you understand
6 that the racketeering charge carries the possibility of
7 a forfeiture order against you, as well? I understand
8 there is no agreement as to the order or as to the
9 amount of an order, but you understand that possibility
10 is there?

11 DEFENDANT EHMEN: Yes, your Honor.

12 MR. MONICO: May I have just one moment with
13 the AUSA?

14 THE COURT: Yes.

15 (Brief pause.)

16 MR. MONICO: Your Honor, in fact, my
17 understanding is that we will be admitting to a
18 forfeiture to the same extent as Dr. Barnabas is. As
19 part of our guilty plea today, it does include
20 admissions to the allegations.

21 THE COURT: I see.

22 THE COURT: All right. Is that your
23 understanding, Mr. Ehmen, that you're admitting the
24 forfeiture allegations in Count 57?

25 DEFENDANT EHMEN: Yes, your Honor.

1 THE COURT: And that subjects you to a strong
2 likelihood that a forfeiture order will be entered
3 against you?

4 DEFENDANT EHMEN: Yes, your Honor.

5 THE COURT: Now, with respect to Dr. Barnabas,
6 I've been given a draft plea agreement.

7 Do you have the final signed plea agreement?

8 MS. SALOVAARA: We do, your Honor. I'll
9 tender that to your minute clerk.

10 (Brief pause.)

11 THE COURT: I have been handed a plea
12 agreement as to Dr. Barnabas, which is twenty-seven
13 pages long. On page twenty-seven it bears the date of
14 October 1st, 2001, and there is a signature over the
15 name Ravi Barnabas.

16 Is this your signature, Mr. Barnabas?

17 DEFENDANT BARNABAS: Yes, your Honor.

18 THE COURT: Did you personally read this
19 twenty-seven page plea agreement before you signed
20 it?

21 DEFENDANT BARNABAS: Yes, your Honor.

22 THE COURT: And, Mr. Monico, did you review
23 all the terms and conditions of this agreement before
24 you signed it?

25 MR. MONICO: Yes, your Honor.

1 THE COURT: All right, what promises has the
2 government made in connection with Dr. Barnabas'
3 decision to plead guilty?

4 MS. STERN: Judge, the government has, in
5 paragraph sixteen, on page twenty-two, agreed not to
6 seek additional criminal charges for events between
7 January 1, 1990, May 17, 2001, that occurred in the
8 Northern District of Illinois, which has been described
9 in the proffer or is described in the plea agreement.
10 It does not limit the United States in other districts
11 or for information of crimes that the defendant has not
12 disclosed.

13 THE COURT: Is that your understanding also,
14 Dr. Barnabas, that in the plea agreement the United
15 States Attorneys Office for the Northern District of
16 Illinois won't seek any additional criminal charges
17 against you --

18 DEFENDANT BARNABAS: Yes, your Honor.

19 THE COURT: -- for the period of time that is
20 specified, between January 1st, 1990 and May 17th of
21 this year?

22 DEFENDANT BARNABAS: Yes, your Honor.

23 THE COURT: But that this agreement does not
24 bind any other U.S. Attorney's Office, do you
25 understand?

1 DEFENDANT BARNABAS: Yes, your Honor.

2 THE COURT: And it does not include any
3 criminal conduct that you have not told them about,
4 should there be any.

5 DEFENDANT BARNABAS: Yes, your Honor. Yes,
6 your Honor.

7 MS. STERN: On that same page, Judge,
8 paragraph eighteen, the government has stated that it
9 will make known to this Court the extent of the
10 defendant's cooperation. And assuming his full and
11 truthful cooperation, shall make a downward departure
12 motion. And the government will make a recommendation
13 to the Court that the sentence be one-third lower than
14 the low end of the applicable guideline range. And that
15 if there is no motion for a downward departure, then the
16 government shall recommend a sentence at the low end of
17 the applicable guideline range.

18 THE COURT: Well, Dr. Barnabas, is it your
19 understanding that the United States Attorney's Office
20 has promised that if you continue to cooperate with
21 them, they will file a motion for the Court to reduce
22 your sentence to two-thirds of the low end of the
23 guideline range the Court applied?

24 DEFENDANT BARNABAS: Yes, your Honor.

25 THE COURT: Now, I see in the plea agreement

1 that your attorney and counsel for the United States
2 have agreed to many of the sentencing guidelines that
3 apply to the case. I just want to make sure you
4 understand that the lawyers' agreement about the
5 sentencing guidelines is not binding on the Probation
6 Office.

7 DEFENDANT BARNABAS: Yes, your Honor.

8 THE COURT: And it is not binding on me. Both
9 the probation and the Court have an independent
10 obligation to evaluate all the facts and circumstances
11 and the law in applying the guidelines.

12 DEFENDANT BARNABAS: Yes, your Honor.

13 THE COURT: Is it also your understanding that
14 if the government decides not to file a downward
15 departure motion for your cooperation, if that happens,
16 they also promise to recommend a sentence at the low end
17 of the guideline range, whatever that is?

18 DEFENDANT BARNABAS: Yes, your Honor.

19 MS. STERN: Judge, paragraph twenty-three, on
20 page twenty-six, provides that after sentence has been
21 imposed on the count to which the defendant pleads
22 guilty, the government will move to dismiss the
23 remaining counts of the indictment.

24 THE COURT: Is that your understanding too,
25 Dr. Barnabas, that all the rest of the charges against

1 you would be dropped?

2 DEFENDANT BARNABAS: Yes, your Honor.

3 THE COURT: Do you understand that the amount
4 of restitution in the case could exceed 5 million
5 dollars?

6 DEFENDANT BARNABAS: Yes, your Honor.

7 THE COURT: And as I mentioned earlier, you
8 understand -- or, actually, you agree that at the time
9 of sentencing a forfeiture judgment shall be entered
10 against you in the amount of 1 million dollars?

11 DEFENDANT BARNABAS: Yes, your Honor.

12 THE COURT: Any other promises between the
13 parties?

14 MS. STERN: I don't believe so, Judge.

15 THE COURT: Mr. Monico, is that correct, any
16 other promises?

17 MR. MONICO: Yes, your Honor, that's
18 correct.

19 THE COURT: And let me ask you, Dr. Barnabas,
20 other than those promises that we've just reviewed, has
21 any agent of the government, attorney for the
22 government, or anyone you thought was giving you a
23 message from the government made any other promises to
24 you that have affected your decision to plead guilty?

25 DEFENDANT BARNABAS: No, your Honor.

1 THE COURT: Has anyone forced you in any way
2 to plead guilty?

3 DEFENDANT BARNABAS: No, your Honor.

4 THE COURT: Has anyone threatened you in any
5 way to cause you to plead guilty?

6 DEFENDANT BARNABAS: No, your Honor.

7 THE COURT: And do you understand that the
8 final decision as to what your sentence will be rests
9 entirely with me?

10 DEFENDANT BARNABAS: Yes, your Honor.

11 THE COURT: And with respect to Mr. Ehmen, as
12 I understand it, there is no written plea agreement with
13 the United States?

14 DEFENDANT EHMEN: Yes, your Honor.

15 THE COURT: And is that also your
16 understanding, Mr. Cook?

17 MR. COOK: That is correct, your Honor.

18 THE COURT: Ms. Stern?

19 MS. STERN: There is no plea agreement,
20 Judge.

21 THE COURT: And that means that absolutely no
22 promises or representations have been made to you by any
23 agent, or attorney for the government, or anybody else
24 you thought was giving you a message from the
25 government?

1 DEFENDANT EHMEN: That's correct, your
2 Honor.

3 MS. STERN: Judge, if I may clarify.

4 THE COURT: Yes.

5 MS. STERN: There is an outstanding proffer
6 letter. So there is an agreement pursuant to the terms
7 of the proffer letter but that only relates to
8 information that he has provided to us pursuant to the
9 proffer letter. It does not have to do with sentencing
10 as a plea agreement. But just because there is an
11 agreement outstanding, to that extent, I wanted to draw
12 it to the Court's attention. And that letter says that
13 other than what is encapsulated in the letter, there are
14 no other promises or agreements.

15 THE COURT: Mr. Cook, what is your
16 understanding of this proffer letter?

17 MR. COOK: Your Honor, the proffer letter was
18 an agreement that we entered into with the United States
19 Attorneys Office in which they offered the type of
20 protection contemplated under the guidelines and under
21 the rules of criminal procedure under which Mr. Ehmen
22 could make statements to the U.S. Attorney's Office and
23 used in the event of trial. That agreement has nothing
24 to do with our decision to plead guilty here.

25 THE COURT: I see. And no promises have been

1 made by the government as to its position at
2 sentencing?

3 MR. COOK: No, your Honor, none whatsoever.

4 THE COURT: It's truly a blind plea, as that
5 term is popularly used?

6 MR. COOK: Yes, your Honor.

7 THE COURT: Has anyone forced you in any way
8 to plead guilty, Mr. Ehmen?

9 DEFENDANT EHMEN: No, your Honor.

10 THE COURT: Have any threats of any nature
11 been made to you by anyone to cause you to plead
12 guilty?

13 DEFENDANT EHMEN: No, your Honor.

14 THE COURT: Is it your own personal decision
15 to plead guilty?

16 DEFENDANT EHMEN: Yes, your Honor.

17 THE COURT: And is your decision voluntary?

18 DEFENDANT EHMEN: Yes, your Honor.

19 THE COURT: And do you understand that the
20 final decision as to what your sentence will be rests
21 entirely with me?

22 DEFENDANT EHMEN: Yes, your Honor.

23 THE COURT: That's subject to your right of
24 appeal as to any sentencing issues you raise. Do you
25 understand?

1 DEFENDANT EHMEN: Yes, your Honor.

2 THE COURT: All right, would you summarize,
3 starting with Dr. Barnabas, the evidence you would be
4 offering as to Dr. Barnabas on Count 57, and,
5 generically, identify the source of the evidence.

6 I'd ask that you listen carefully,
7 Dr. Barnabas, because if you disagree with any part of
8 Ms. Stern's statement, I would need to know that.

9 DEFENDANT BARNABAS: Yes, your Honor.

10 MS. STERN: Judge, it would be economical for
11 me to summarize as to both of them because they are both
12 engaged in the same conduct in the same count, if that's
13 all right?

14 THE COURT: All right, then, we'll do it that
15 way.

16 Mr. Ehmen, again, I'll ask you also to listen
17 very carefully. And if you wish to discuss any part of
18 Ms. Stern's statement with your attorneys at any point
19 in her statement, just let me know and we'll stop the
20 proceedings so you each have an opportunity to speak
21 with your lawyers if there is any concern you have or
22 you object to any of the characterizations that are
23 made.

24 MS. STERN: Judge, I anticipate that, at
25 trial, the government would offer numerous tape

1 recordings and transcripts that involve both
2 Dr. Barnabas and Mr. Ehmen, as well as two other
3 coconspirators, Dr. Rao and Dr. Kumar.

4 The evidence would also include medical
5 records relating to patients that were admitted into
6 Edgewater Hospital. It would include financial records,
7 it would include witness testimony, it would include
8 patients who would testify, other doctors who would
9 testify, and other coconspirators who would testify,
10 including at least one patient recruiter.

11 The evidence would show that there was an
12 association, in fact, which was made up of Bainbridge
13 Management, Roger Ehmen, another individual who was an
14 officer or employee of Bainbridge Management, Dr. Rao,
15 Dr. Kumar, and others.

16 That the association, in fact, which was an
17 enterprise, had an impact on interstate commerce and
18 engaged in interstate commerce, which included the
19 submission of claims and reports to insurers out of
20 state in the receipt of payments from insurers that were
21 located out of state.

22 The evidence would show that there were
23 mailings, which have been identified in Count 57, which
24 were on or about the dates identified from the insurers
25 that are identified, relating to the patients

1 identified. That those were, in fact, in furtherance of
2 the scheme. And that there were two wires, wire
3 transfers of money from out of state into Illinois from
4 Medicaid relating to Medicaid patients.

5 The evidence would show that for Dr. Barnabas,
6 from approximately 1995 to approximately October 1998,
7 and for Roger Ehmen, from at least 1995 through the year
8 2000, there were a series of activities that occurred
9 during the scheme.

10 That the two defendants caused Edgewater to
11 give Dr. Rao a contract concerning anesthesia in
12 exchange for patient admissions.

13 That as part of that scheme, the two
14 defendants caused Edgewater to pay Dr. Rao a monthly fee
15 of \$15,000 in exchange for admitting approximately
16 twenty-five to thirty medical patients, and that Dr. Rao
17 used about \$12,000 of that money to pay Dr. Kumar.

18 And there would be tape recordings in which
19 those payments were explicitly discussed. The admission
20 of patients is on tape where Dr. Kumar calls Dr. Rao,
21 Dr. Rao then calls Roger Ehmen and he arranges for those
22 patients to be admitted under Dr. Barnabas.

23 The evidence would show that Roger Ehmen
24 caused Edgewater to pay Rao a monthly fee of about
25 \$20,000 for a period of time in exchange for admitting

1 approximately twenty-five to thirty detox patients every
2 month, and that those patients were often obtained
3 through patient recruiters and that those patients were
4 often coached, sometimes given money, in order to
5 convince them to come into the hospital.

6 The evidence would show that numerous patients
7 were admitted who did not need to be hospitalized, and
8 that that occurred for various reasons. Some of the
9 people wanted to have a checkup and they were willing to
10 have that checkup take place in the hospital.

11 Some of the patients were told by Dr. Rao --

12 THE COURT: Excuse me just a moment.

13 (Brief pause.)

14 THE COURT: Sorry. Go ahead.

15 MS. STERN: Some of the patients were told by
16 Dr. Rao or Dr. Kumar that they were ill and needed to be
17 hospitalized when, in fact, they were not ill.

18 The evidence would show that when patients
19 were hospitalized who didn't need to be there,
20 Dr. Barnabas sometimes made false entries or exaggerated
21 symptoms into the patient's file and that other doctors
22 also made false entries into the medical records. And
23 that certain tests were ordered by Dr. Barnabas and
24 others, including x-rays, blood tests, ultrasounds,
25 which did not need to be ordered.

1 The evidence would show that patients were
2 sent to the hospital without realizing that the reason
3 they were being sent to the hospital was because there
4 were kickbacks being paid in exchange for their
5 admissions.

6 The evidence would show that false claims were
7 submitted and that false information in cost reports
8 were submitted to Medicare. That there was a waiver of
9 copayments and deductibles in order to induce patients
10 to come into the hospital.

11 So, Judge, that is what the trial would show
12 in terms of both Dr. Barnabas and Roger Ehmen.

13 In terms of Dr. Barnabas, there would be
14 relevant conduct relating to Methodist Hospital and
15 Doctors Hospital where this scheme was similar to the
16 one that I have just described.

17 THE COURT: Well, Dr. Barnabas, in your
18 opinion, has Ms. Stern accurately described your
19 involvement in the case?

20 DEFENDANT BARNABAS: Yes, your Honor. Yes,
21 your Honor.

22 THE COURT: And do you disagree with any
23 portion of her description of the activities as they
24 relate to your own conduct?

25 DEFENDANT BARNABAS: No, your Honor.

1 THE COURT: Is there anything you would like
2 to add at this time?

3 DEFENDANT BARNABAS: Not that I can think of,
4 your Honor.

5 THE COURT: And, Mr. Ehmen, in your judgment,
6 has Ms. Stern accurately and fairly described your
7 involvement in the case?

8 DEFENDANT EHMEN: Yes, your Honor.

9 THE COURT: Do you disagree with any portion
10 of the details as they relate to you?

11 DEFENDANT EHMEN: No, your Honor.

12 THE COURT: Is there anything you would like
13 to add at this time?

14 DEFENDANT EHMEN: Just that I'm very sorry
15 for my actions and I accept full responsibility for
16 them.

17 THE COURT: All right, Dr. Barnabas?

18 DEFENDANT BARNABAS: My apologies to the Court
19 and to my patients, your Honor, and I also accept full
20 responsibility for my actions.

21 THE COURT: Let me ask you, Dr. Barnabas, what
22 plea do you wish to enter to Count 57 of the indictment,
23 guilty or not guilty?

24 DEFENDANT BARNABAS: Guilty, your Honor.

25 THE COURT: Since you acknowledge that you